

1995

The State of Utah v. Patrick Coco Williams : Brief of Appellant

Utah Court of Appeals

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Jan Graham; Attorney General; Attorney for Appellee.

Ronald S. Fujino; Lisa J. Remal; Salt Lake Legal Defender Association; Attorney for Appellant.

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UTAH COURT OF APPEALS
BRIEF

UTAH
DOCKET NO. 950332-CA
FILED
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A10

IN THE COURT OF APPEALS OF THE STATE OF UTAH

THE STATE OF UTAH, :
Plaintiff/Appellee, :
v. :
PATRICK COCO WILLIAMS : Case No. 950332-CA
Defendant/Appellant. : Priority No. 2

BRIEF OF APPELLANT

Appeal from a judgment and conviction for aggravated assault, a third degree felony, in violation of Utah Code Ann. § 76-5-103; tampering with a witness, a third degree felony, in violation of Utah Code Ann. § 76-8-508; and violation of protective order, a class A misdemeanor, in violation of Utah Code Ann. § 76-5-108, in the Third Judicial District Court, Salt Lake County, the Honorable Homer F. Wilkinson, presiding.

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FILED

OCT 13 1995

COURT OF APPEALS

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May 14, 1996

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COURT OF APPEALS

Ms. Marilyn M. Branch
Utah Court of Appeals
400 Midtown Plaza
230 South 500 East
Salt Lake City, Utah 84102

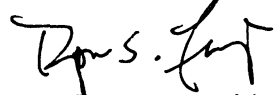
Dear Ms. Branch:

Re: *State v. Williams*
Case No. 950332-CA

Pursuant to Rule 24(i) of the Utah Rules of Appellate Procedure, Defendant/Appellant Patrick C. Williams cites the following supplemental authority in support of his argument that a begrudging recommendation by the State also constitutes a violation of the plea bargain agreement:

United States v. Canada, 960 F.2d 263 (1st Cir. 1992) (vacating sentence because "it is improper for the prosecutor to inject material reservations about the agreement to which the government has committed itself"); see also *id.* at 271 (quoting *Correale v. United States*, 479 F.2d 944, 949 (1st Cir. 1973) ("a prosecutorial failure to fulfill a promise or to make a proper promise is not rendered harmless because of judicial refusal to follow the recommendation or judicial awareness of the impropriety"); *United States v. Taylor*, 77 F.3d 368, 371 (11th Cir. 1996) ("the government's begrudging recommendation was too little, too late to undo the effect of its breach").

Respectfully,


Ronald S. Fujino
Attorney for Mr. Williams

CERTIFICATE OF DELIVERY

I, RONALD S. FUJINO, hereby certify that I have caused to be delivered an original and seven copies of the foregoing to the Utah Court of Appeals, 230 South 500 East, Suite 400, Salt Lake City, Utah 84102, and four copies to the Utah Attorney General's Office, Heber M. Wells Building, 160 East 300 South, 6th Floor, P. O. Box 140854, Salt Lake City, Utah 84114-0854, this 15th day of May, 1996.



RONALD S. FUJINO

DELIVERED this _____ day of May, 1996.

DELIVERED BY

MAY 15 1996

V. LOADER

IN THE COURT OF APPEALS OF THE STATE OF UTAH

THE STATE OF UTAH,	:	
Plaintiff/Appellee,	:	
v.	:	
PATRICK COCO WILLIAMS	:	Case No. 950332-CA
Defendant/Appellant.	:	Priority No. 2

BRIEF OF APPELLANT

Appeal from a judgment and conviction for aggravated assault, a third degree felony, in violation of Utah Code Ann. § 76-5-103; tampering with a witness, a third degree felony, in violation of Utah Code Ann. § 76-8-508; and violation of protective order, a class A misdemeanor, in violation of Utah Code Ann. § 76-5-108, in the Third Judicial District Court, Salt Lake County, the Honorable Homer F. Wilkinson, presiding.

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IN THE COURT OF APPEALS OF THE STATE OF UTAH

THE STATE OF UTAH,	:	
Plaintiff/Appellee,	:	
v.	:	
PATRICK COCO WILLIAMS	:	Case No. 950332-CA
Defendant/Appellant.	:	Priority No. 2

JURISDICTIONAL STATEMENT

Jurisdiction is conferred on this Court pursuant to Utah Code Ann. section 78-2a-3(2)(f), whereby a defendant in a district court criminal action may take an appeal to the Court of Appeals from a final judgment and conviction for any crime other than a first degree or capital felony. See also Utah R. Crim. P. 26(2)(a).

STATUTES AND CONSTITUTIONAL PROVISIONS

The pertinent parts of the following statutes and constitutional provisions are contained in the text of this brief or in Addendum A:

Utah Code Ann. § 76-5-103
Utah Code Ann. § 76-5-108
Utah Code Ann. § 76-8-508
Utah Code Ann. § 77-16a-202

STATEMENT OF THE ISSUES AND STANDARDS OF REVIEW

When the prosecution and the defense both agree to a plea bargain arrangement, if the prosecution later unilaterally breaches its promises, does the court err in not fulfilling the

initial promises? See (R 295-96) (preservation of issue)¹. "A trial court's legal conclusions are accorded no particular deference." *Grayson Roper Ltd. v. Finlinson*, 782 P.2d 467, 470 (Utah 1989); *State v. Petersen*, 810 P.2d 421, 425 (Utah 1991) ("trial courts do not have discretion to misapply the law").

STATEMENT OF THE CASE AND NATURE OF THE PROCEEDINGS

Appeal from a judgment and conviction for aggravated assault, a third degree felony, in violation of Utah Code Ann. § 76-5-103; tampering with a witness, a third degree felony, in violation of Utah Code Ann. § 76-8-508; and violation of a protective order, a class A misdemeanor, in violation of Utah Code Ann. § 76-5-108, in the Third Judicial District Court, Salt Lake County, the Honorable Homer F. Wilkinson, presiding.

On February 10, 1995, Mr. Patrick Williams entered pleas of guilty and mentally ill to the above charges in conformity with a plea bargain agreement. (R 255-68). On April 21, 1995, the court imposed the following sentences: a zero-to-five year term for aggravated assault; a zero-to-five year term for tampering

¹ In *Santobello v. New York*, 404 U.S. 257, 259 (1971), defense counsel objected when the sentencing recommendation of one prosecutor differed from the promise made by another prosecutor who had negotiated the plea. *Id.* at 259. Such an objection, together with a request "to adjourn the sentence hearing in order to have time to prepare proof of the first prosecutor's promise[,] " *id.*, apparently preserved the issue for appeal. A similar type of objection and request was made here. See (R 295-96). In the alternative, the *Santobello* case and the virtually identical circumstances existing here reflect "plain error" (error which is both obvious and harmful) or "exceptional circumstances" (safety device invoked to make certain that manifest injustice does not result from the failure to consider an issue on appeal). *State v. Archambeau*, 820 P.2d 920, 922-23 (Utah App. 1991).

with a witness; and a one year term for violation of a protective order. (R 293). The terms for aggravated assault and tampering with a witness were imposed consecutively and the term for violation of a protective order ran concurrently with the other terms. (R 293-94). On April 28, 1995, following a brief continuance, *see infra* Statement of the Facts, the court reconsidered the sentence but left intact its original order. (R 298-308). This appeal followed.

STATEMENT OF THE FACTS

On February 10, 1995, the State and Mr. Williams mutually agreed to a plea bargain. See (R 218-25) (attached as Addendum B). In exchange for Mr. Williams pleas of guilty and mentally ill to aggravated assault, tampering with a witness, and violation of a protective order, the State dismissed one count of aggravated burglary together with the following recommendations:

The State recommends: (1) that the defendant be evaluated at the Utah State Hospital pursuant to his guilty and mentally ill plea; and (2) that the defendant be committed to the Department of Human Services for care and treatment, if deemed appropriate pursuant to the evaluation at the Utah State Hospital, and that the court retain jurisdiction, pursuant to § 77-16a-202(1)(b), Utah Code Ann., and (3) that at the expiration of the care and treatment provided by the Department of Human Services, or if such care and treatment is deemed unnecessary after the evaluation at the Utah State Hospital, the court should recall jurisdiction over the defendant's sentence pursuant to § 77-16a-202(1)(b) and place the defendant on probation; and (4) that the defendant shall not be sentenced to prison, but the State will recommend that he serve one year of jail, without credit for time served, as a condition of probation.

(R 218).

The trial court indicated that it would likely follow the recommendations. (R 222); (R 259) (court also wanted to review the pre-sentence report). The entry of plea proceedings, dated February 10, 1995, were made in line with the agreed upon recommendations.

At the time of sentencing, however, a prosecutor different from the one who had negotiated the plea bargain appeared on behalf of the State. (R 282) (sentencing proceedings, dated April 21, 1995). The new prosecutor acknowledged the prior prosecutor's representations, (R 284), but rather than keeping those promises the State chose to submit the matter in accordance with the less palatable recommendation in the presentence report. (R 285). The presentence evaluation recommended a sentence of prison because "the Utah State Prison has the capacity to handle individuals with this type of behavioral condition[.]" (R 285).

Besides reneging on its agreement to recommend treatment at the department of human services, (R 218) (recommendation #2), the State's breach altered the likelihood of probation and medical and psychological treatment in a facility better suited to address the care of Mr. Williams. Due to the sudden change in the State's position, Mr. Williams requested and received a one week continuance to speak with the prosecutor who had originally agreed to make the recommendations. (R 295-96).

On April 28, 1995, the original prosecutor appeared and stated that the plea bargain recommendations were changed because of evaluations from the state hospital. (R 301). Due to

conflicting claims of malingering, the State recommended that the court retain jurisdiction by sending Mr. Williams to the state hospital for more extensive observation. (R 302). The court declined to alter its prior sentence.

SUMMARY OF THE ARGUMENT

When a defendant fulfills his part of a bargain by agreeing to enter a plea pursuant to promises made by the prosecution, the prosecution must similarly fulfill any agreements that it makes. Mr. Williams kept his part of the bargain by entering his guilty and mentally ill pleas. The State, however, breached its promise of recommending probation and by submitting the matter at sentencing with a recommendation of prison. Despite the existence of the State's prior promises and the trial court's acknowledgment at the time together with its statement that it likely would follow them, the plea bargain arrangements were not subsequently followed. The promises which prompted Mr. Williams to enter his pleas should be enforced.

ARGUMENT

THE PROMISE BREACHED BY THE PROSECUTION SHOULD BE FULFILLED SINCE MR. WILLIAMS HONORED HIS PART OF THE BARGAIN

In *Santobello v. New York*, 404 U.S. 257 (1971), "we granted certiorari in this case to determine whether the State's failure to keep a commitment concerning the sentence recommendation on a guilty plea required a new trial." *Id.* at 257-58. The Court unanimously held that when a guilty plea rests in significant

part on a promise by the prosecution, the promise must be fulfilled. *Id.* at 263; accord *North v. State*, 878 S.W.2d 66 (Mo. App. 1994).

In *Santobello*, as in the case at bar, the prosecution had entered into a plea bargain and made certain promises in exchange for the defendant's guilty plea(s). Compare 404 U.S. at 258 (two felony counts dropped, guilty plea entered for a lesser included offense), with (R 257-61) (first degree felony count dropped, guilty and mentally ill pleas entered for a two third degree felonies and a misdemeanor charge).

Because the prosecution in *Santobello* had "agreed to make no recommendation as to the sentence[,]" 404 U.S. at 258, "[p]etitioner represented to the sentencing judge that the plea was voluntary and that the facts of the case, as described by the Assistant District Attorney, were true. The court accepted the plea and set a date for sentencing." *Id.*

At sentencing, though, "another prosecutor had replaced the prosecutor who had negotiated the plea. The new prosecutor recommended the maximum one-year sentence. In making this recommendation, he cited petitioner's criminal record and alleged links with organized crime." *Santobello*, 404 U.S. at 259.

In response, the trial court stated, "I am not at all influenced by what the District Attorney says, . . . It doesn't make a particle of difference what the District Attorney says he will do, or what he doesn't do." *Id.* "The judge then imposed the maximum sentence of one year." *Id.* at 260.

On appeal, the United States Supreme Court reversed. "Disposition of charges after plea discussions is not only an essential part of the process but a highly desirable part for many reasons." 404 U.S. at 261. "However, all of these considerations presuppose fairness in securing agreement between an accused and a prosecutor." *Id.*

This phase of the process of criminal justice [entry of pleas], and the adjudicative element inherent in accepting a plea of guilty, must be attended by safeguards to insure the defendant what is reasonably due in the circumstances. Those circumstances will vary, but a constant factor is that when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled.

Santobello, 404 U.S. at 262 (emphasis added).

The case at bar similarly requires fulfillment of the prosecution's promises. Mr. Williams, like Mr. Santobello, "'bargained' and negotiated for a particular plea in order to secure dismissal of more serious charges, . . ." *Santobello*, 404 U.S. at 262; (R 218-25).

The additional condition for Mr. Santobello's plea was "that no sentence recommendation would be made by the prosecutor." *Id.* But see 404 U.S. at 259 (the State later recommended a one-year term). An additional condition for Mr. Williams' plea was that "[Mr. Williams] shall not be sentenced to prison, but the State will recommend that he serve one year in jail without credit for time served as a condition of probation." (R 259). But see (R 285) (the State later recommended treatment "either in prison or

at the state hospital"). The prosecution in both instances breached its promises. 404 U.S. at 259; (R 285).

In addition, the trial court in each situation was not necessarily "influenced by what the District Attorney says":

Nevertheless, we conclude that the interests of justice and appropriate recognition of the duties of the prosecution in relation to promises made in the negotiation of pleas of guilty will be best served by remanding the case to the state courts for further consideration. The ultimate relief to which petitioner is entitled we leave to the discretion of the state court, which is in a better position to decide whether the circumstances of this case require only that there be specific performance of the agreement on the plea, in which case petitioner should be resentenced by a different judge, or whether, in the view of the state court, the circumstances require granting the relief sought by petitioner, i.e., the opportunity to withdraw his plea of guilty.

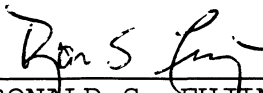
Santobello, 404 U.S. at 262-63.

Mr. Williams is entitled to "specific performance of the agreement on the plea", *id.* at 263, with "considerable, if not controlling, weight [accorded Williams' preference] inasmuch as the fundamental rights flouted by a prosecutor's breach of a plea bargain are those of the defendant, not of the State." *See id.* at 267 (Douglas, J., concurring). As in *Santobello*, the judgment here should be vacated.

CONCLUSION

Mr. Williams respectfully requests that this Court reverse the lower court's order and enforce the promises in his plea bargain agreement.

SUBMITTED this 13th day of October, 1995.

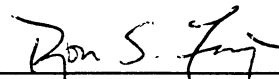


RONALD S. FUJINO
Attorney for Defendant/Appellant

LISA J. REMAL
Attorney for Defendant/Appellant

CERTIFICATE OF DELIVERY

I, RONALD S. FUJINO, hereby certify that I have caused eight copies of the foregoing to be delivered to the Utah Court of Appeals, 230 South 500 East, Suite 400, Salt Lake City, Utah 84102, and two copies to the Attorney General's Office, 236 State Capitol, Salt Lake City, Utah 84114, this 13th day of October, 1995.



RONALD S. FUJINO

DELIVERED by _____
this _____ day of October, 1995.

ADDENDUM A

76-5-103. Aggravated assault.

(1) A person commits aggravated assault if he commits assault as defined in Section 76-5-102 and he:

- (a) intentionally causes serious bodily injury to another; or
 - (b) uses a dangerous weapon as defined in Section 76-1-601 or other means or force likely to produce death or serious bodily injury.
- (2) Aggravated assault is a third degree felony.

76-5-108. Protective orders restraining abuse of another — Violation.

Any person who has been restrained from abusing or contacting another or ordered to vacate a dwelling or remain away from the premises of the other's residence, employment, or other place as ordered by the court under a protective order or ex parte protective order issued under Title 30, Chapter 6, or Title 78, Chapter 3a, who violates that order after having been properly served with it, is guilty of a class A misdemeanor.

76-8-508. Tampering with witness — Retaliation against witness or informant — Bribery — Communicating a threat.

(1) A person is guilty of a third degree felony if, believing that an official proceeding or investigation is pending or about to be instituted, he attempts to induce or otherwise cause a person to:

- (a) testify or inform falsely;
- (b) withhold any testimony, information, document, item;
- (c) elude legal process summoning him to provide evidence; or
- (d) absent himself from any proceeding or investigation to which he has been summoned.

(2) A person is guilty of a third degree felony if he:

- (a) commits any unlawful act in retaliation for anything done by another as a witness or informant;
- (b) solicits, accepts, or agrees to accept any benefit in consideration of his doing any of the acts specified under Subsection (1); or
- (c) communicates to a person a threat that a reasonable person would believe to be a threat to do bodily injury to the person, because of any act performed or to be performed by the person in his capacity as a witness or informant in an official proceeding or investigation.

77-16a-202. Commitment to department.

(1) In sentencing and committing a mentally ill offender to the department under Subsection 77-16a-104(3)(a), the court shall:

(a) sentence the offender to a term of imprisonment and order that he be committed to the department for care and treatment until transferred to UDC in accordance with Sections 77-16a-203 and 77-16a-204; or

(b) sentence the offender to a term of imprisonment and order that he be committed to the department for care and treatment for no more than 18 months, or until he has reached maximum benefit, whichever occurs first. At the expiration of that time, the court may recall the sentence and commitment, and resentence the offender. A commitment and retention of jurisdiction under this subsection shall be specified in the sentencing order. If that specification is not included in the sentencing order, the offender shall be committed in accordance with Subsection (a).

(2) The court may not retain jurisdiction, under Subsection (1)(b), over the sentence of a mentally ill offender who has been convicted of a capital offense. In capital cases, the court shall make the findings required by this section after the capital sentencing proceeding mandated by Section 76-3-207.

(3) When an offender is committed to the department under Subsection (1)(b), the department shall provide the court with reports of the offender's mental health status every six months. Those reports shall be prepared in accordance with the requirements of Section 77-16a-203. Additionally, the court may appoint an independent examiner to assess the mental health status of the offender.

(4) The period of commitment may not exceed the maximum sentence imposed by the court. Upon expiration of that sentence, the administrator of the facility where the offender is located may initiate civil proceedings for involuntary commitment in accordance with Title 62A, Chapter 12 or Title 62A, Chapter 5.

ADDENDUM B

FILED DISTRICT COURT
Third Judicial District
IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
STATE OF UTAH

FEB 10 1995

By [Signature] SALT LAKE COUNTY
Deputy Clerk

THE STATE OF UTAH,)	
Plaintiff,)	STATEMENT OF DEFENDANT
V.)	CERTIFICATE OF COUNSEL & ORDER
<u>Patrick Coco Williams</u> ,)	Criminal No. <u>941900389 FS</u>
Defendant.)	JUDGE <u>Homer Wilkinson</u>

COMES NOW, Patrick Coco Williams, the defendant
in this case and hereby acknowledges the following:

I have entered a plea of (guilty) (no contest) to the
following crime(s): and mentally ill

<u>CRIME & STATUTORY PROVISION</u>	<u>DEGREE</u>	<u>PUNISHMENT (Min. / Max.) and/or Min. Mandatory</u>
A. <u>Aggravated Assault</u> <u>- § 76-5-103, UCA</u>	<u>Third Degree Felony</u>	- <u>0-5 yrs. prison and/or \$5,000 fine plus 85% surcharge.</u>
B. <u>Witness Tampering</u> <u>- § 76-8-508, UCA</u>	<u>Third Degree Felony</u>	- <u>0 to 5 yrs. prison and/or \$5,000 fine plus 85% surcharge.</u>
C. <u>Violation of Protective Order</u> <u>- § 76-5-108, UCA</u>	<u>Class A misdemeanor</u>	- <u>One year jail and/or \$2,500 fine plus 85% surcharge.</u>
<u>Aggravated Burglary dismissed.</u>		

Plea Bargain: The State recommends: ① that the defendant be
evaluated at the Utah State Hospital pursuant to his guilty and mentally
ill plea; and ② that the defendant be committed to the Department of
Human Services for care and treatment, if deemed appropriate pursuant to the
evaluation at the Utah State Hospital, and that the court retain
jurisdiction, pursuant to § 77-16a-202 (1) (b), Utah Code Ann. (continued on
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③ that at the expiration of the care and treatment provided by the Department of Human Services, or if such care and treatment is deemed unnecessary after the evaluation at the Utah State Hospital, the court should recall jurisdiction over the defendant's sentence pursuant to § 77-16a-202 (1)(b) and place the defendant on probation; and ④ that the defendant shall not be sentenced to prison, but the state will recommend that he serve one year of jail, without credit for time served, as a condition of probation.

I have received a copy of the (charge) (information) against me, I have read it, and I understand the nature and elements of the offense(s) for which I am pleading (guilty). (no contest).

The elements of the crime(s) of which I am charged are as follows:

- A. Aggravated Assault: To assault another by use of a dangerous weapon, or by such means or force likely to produce serious bodily injury.
- B. Witness Tampering: Believing that an official proceeding is pending, to attempt ^{and mentally ill} to induce a person to withhold testimony or information, or elude legal process summoning him to provide evidence.
- C. Violation of Spouse Abuse Protective Order: To violate an order which orders a person to vacate a dwelling, after being properly served with said order.
- My conduct, and the conduct of other persons for which I am criminally liable, that constitutes the elements of the crime(s) charged are as follows: On or about Feb. 23, 1994, at 423 North Chicago St. in Salt Lake County, State of Utah, I entered my home after having been served with an order which ordered me to leave my home. After entering the home, I hit Kerrie Floyd with a snow shovel which caused injuries requiring medical treatment. On March 27, 1994, I called Kerrie Floyd on the phone and asked her to "drop" the case.

I am entering this/these plea(s) voluntarily and with knowledge and understanding of the following facts:

1. I know that I have the right to be represented by an attorney and that if I cannot afford one, an attorney will be appointed by the court at no cost to me. I recognize that a condition of my sentence may be to require me to pay an amount, as determined by the court, to recoup the cost of counsel if so appointed for me.

2. I (have not) (have) waived my right to counsel. If ~~I have waived my right to counsel, I have done so knowingly, intelligently and voluntarily for the following reasons:~~

Not applicable.

3. If I have waived my right to counsel, I have read this statement and understand the nature and elements of the charges, my rights in this and other proceedings and the consequences of my plea of guilty and mentally ill.

4. If I have not waived my right to counsel, my attorney is David J. Bernal / Robert Steele, and I have had an opportunity to discuss this statement, my rights and the consequences of my guilty plea with my attorney.
and mentally ill

5. I know that I have a right to a trial by jury.

6. I know that if I wish to have a trial I have the right to confront and cross-examine witnesses against me or to have them cross-examined by my attorney. I also know that I have the right to compel my witness(es) by subpoena at state expense to testify in court upon my behalf.

7. I know that I have a right to testify in my own behalf but if I choose not to do so I cannot be compelled to testify or give evidence against myself and no adverse inferences will be drawn against me if I do not testify.

8. I know that if I wish to contest the charge against me I need only plead "not guilty" and the matter will be set for trial. At the trial the state of Utah will have the burden of

proving each element of the charge beyond a reasonable doubt. If the trial is before a jury the verdict must be unanimous.

9. I know that under the Constitution of Utah that if I were tried and convicted by a jury or by the judge that I would have the right to appeal my conviction and sentence to the Utah Court of Appeals or, where allowed, the Utah Supreme Court and that if I could not afford to pay the costs for such appeal, those costs would be paid by the state.

10. I know the maximum sentence that may be imposed for each offense to which I plead (guilty) *and manually* (no contest). ~~I know that by pleading (guilty) (no contest) to an offense that carries a minimum mandatory sentence that I will be subjecting myself to serving a minimum mandatory sentence for that offense.~~ I know that the sentences may be consecutive and may be for a prison term, fine, or both. I know that in addition to a fine an eighty-five percent (85%) surcharge, required by Utah Code Annotated 63-63a-4, will be imposed. I also know that I may be ordered by the court to make restitution to any victim(s) of my crimes.

11. I know that imprisonment may be for consecutive periods, or the fine for additional amounts, if my plea is to more than one charge. I also know that if I am on probation, parole, or awaiting sentencing on another offense of which I have been convicted or to which I have plead guilty, my plea in the present action may result in consecutive sentences being imposed upon me.

12. I know and understand that by pleading (guilty) and mentally ill (no contest) I am waiving my statutory and constitutional rights set out in the preceding paragraphs. I also know that by entering such plea(s) I am admitting and do so admit that I have committed the conduct alleged and I am guilty of the crime(s) for which my plea(s) and mentally ill is/are entered.

13. My plea(s) is/are the result of a plea bargain between myself and the prosecuting attorney. The promises, duties and provisions of this plea bargain, if any, are fully contained in the Plea Agreement attached to this affidavit. *See page one.*

14. I know and understand that if I desire to withdraw my plea(s) of (guilty) (no contest) I must do so by filing a motion and mentally ill within thirty (30) days after entry of my plea.

15. I know that any charge or sentencing concession or recommendation of probation or suspended sentence, including a reduction of the charges for sentencing made or sought by either defense counsel or the prosecuting attorney are not binding on the Judge. I also know that any opinions they express to me as to what they believe the court may do are also not binding on the court. *However, the court, pursuant to Rule 11, indicated it would likely follow the state's recommendations.*

16. No threats, coercion, or unlawful influence of any kind have been made to induce me to plead guilty, and mentally ill and no promises, except those contained herein and in the attached plea agreement, have been made to me.

17. I have read this statement or I have had it read to me by my attorney, and I understand its provisions. I know that I

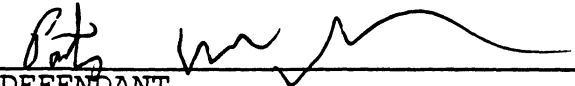
am free to change or delete anything contained in this statement. I do not wish to make any changes because all of the statements are correct.

18. I am satisfied with the advice and assistance of my attorney.

19. I am 40 years of age; I have attended school through the 12th grade and I can read and understand the English language, ~~or an interpreter has been provided to me.~~ I was not under the influence of any drugs, medication or intoxicants which would impair my judgment when the decision was made to enter the plea(s). I am not presently under the influence of any drug, medication or intoxicants which impair my judgment.


20. I believe myself to be of sound and discerning mind, mentally capable of understanding the proceedings and the consequences of my plea and free of any mental disease, defect or impairment that would prevent me from knowingly, intelligently and voluntarily entering my plea.

DATED this 10th day of February, 1995.


DEFENDANT

CERTIFICATE OF DEFENSE ATTORNEY

I certify that I am the attorney for Patrick Coco Williams, the defendant above, and that I know he/she has read the statement or that I have read it to him/her and I have discussed it with him/her and believe that he/she fully understands the meaning of its contents and is mentally and physically competent. To the best of my knowledge and belief after an appropriate investigation, the elements of the crime(s) and the factual synopsis of the defendant's criminal conduct are correctly stated and these, along with the other representations and declarations made by the defendant in the foregoing affidavit, are accurate and true.



ATTORNEY FOR DEFENDANT/BAR NUMBER
John J. Remal #2722

CERTIFICATE OF PROSECUTING ATTORNEY

I certify that I am the attorney for the State of Utah in the case against Patrick Coco Williams, defendant. I have reviewed this statement of the defendant and find that the declaration, including the elements of the offense of the charge(s) and the factual synopsis of the defendant's criminal conduct which constitutes the offense are true and correct. No improper inducements, threats or coercion to encourage a plea have been offered defendant. The plea negotiations are fully contained in the statement and in the attached plea agreement or as supplemented on

record before the court. There is reasonable cause to believe that the evidence would support the conviction of defendant for the offense(s) for which the plea(s) is/are entered and acceptance of the plea(s) would serve the public interest.

Ann Boyden /5043
PROSECUTING ATTORNEY/BAR NUMBER

ORDER

Based upon the facts set forth in the foregoing statement and the certification of the defendant and counsel, the court witnesses the signatures and finds the defendant's plea of (guilty) (no contest) is freely and voluntarily made and it is so ordered that the defendant's plea of (guilty) (no contest) to the charge(s) set forth in the statement be accepted and entered.

DONE IN COURT this 10 day of Feb., 1975.

J. F. Wallen
DISTRICT JUDGE